IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4872 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAMMED AMIN GULAM RASUL SHAIKH - Petitioner(s)
Versus
STATE OF GUJARAT THRO.SECRETARY & 2 - Respondent(s)

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Appearance :

MR EJAZ M QURESHI for Petitioner(s) : 1,
MS.MD MEHTA AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 08/08/2007

ORAL JUDGMENT

1. The petitioner has invoked Article 226 of the Constitution to challenge the order dated 29.12.2006 of his detention under the provisions of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "PASA").

According to that order, the petitioner is a bootlegger within the meaning and definition of Section 2(b) of the Act and he was dealing in liquor imported from other States which caused danger to public health. It is stated in the grounds of detention, supplied to the petitioner under the provisions of Section 9 of the Act, that two offences under the Prohibition Act, namely III-C.R.No.565 of 2006 and III-C.R.No.432 of 2006 were registered against him on 25.11.2006 pursuant to which 19 and 14 bottles of liquor were seized as 'muddamal' and he was arrested on 25/26.11.2006. After being released on bail on the next date of registration of the offences, the petitioner was again detained under the impugned order on 29.12.2006.

2. It was submitted by learned counsel Mr.Ejaz M. Qureshi, appearing for the petitioner, that the aforesaid alleged offences were registered on the same day without any previous record of any other offences against the petitioner and even the quantity of liquor

involved in the alleged offences clearly indicated that, at the worst, those were stray and solitary incidents which could, by no stretch, cause grave or widespread danger to public health. He further submitted that co-detenu of the petitioner, who was detained by similar order on the same date, was ordered to be released and the order was quashed by judgment dated 12.06.2007 of this Court in Special Civil Application No.4215 of 2007.

3. Learned counsel relied upon the recent judgment of the Hon'ble Supreme Court in **Commissioner of Police and others V/s. C. Anita(Smt.) [(2004)7 SCC 467]** wherein it is held that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder.

4. Learned A.G.P. Ms.M.D. Mehta, appearing

for the respondents, submitted that the detaining authority was subjectively satisfied about necessity of preventing the petitioner from acting in any manner prejudicial to the maintenance of public order and since illicit liquor caused danger to public health, it has to be deemed to be likely to be adversely affect public order. She relied upon Division Bench decision of this Court in **Rajandrakumar Natwarlal Shah V/s. State of Gujarat and another [1988(1) G.L.H. 140]** and recent judgment of the Hon'ble Supreme Court in **State of U.P. and another V/s. Sanjai Pratap Gupta alias Pappu and others [(2004)8 SCC 591]** for the following observations made therein:-

> “12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and

therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. XXXXX XXXXX

14. The stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance. It is not the number of acts that matters. What has to be seen is the effect of the act on the even tempo of life, the extent of its reach upon society and its impact."

5. It is recently held by this Court in the judgment dated 02.08.2007 in Special Civil Application No.892 of 2007, after consideration of several recent judgments on the issue that:

"7.2.....When such activity is carried on in a reasonably noticeable scale, the person concerned could be assumed to be

doing it in a systematic manner for undue economic advantage and it could sustain the assumption of likelihood of his persisting in such activity in future, posing grave or widespread danger to life, property or public health.

Stray incidents of anti-social activities on a very small scale, however, may not in all cases sustain such assumption of danger to life, property or public health, particularly in view of the adjectives "*grave or widespread*" as used in the explanation to qualify danger.”

8. XXXXX XXXXX XXXXX

9. It has to be borne in mind while considering challenge to an order of preventive detention, that the purpose and justification of such order is prevention of an activity which is likely to be prejudicial to the maintenance of public order. The material in respect of past conduct and activities of the person is relevant for the purpose of ascertaining whether he

> is falling in a particular category such as "*bootlegge*r" and may by itself sustain and justify the order of detention and may as well or only provide the basis for assuming the likelihood of his continuing the activity which may adversely affect the maintenance of public order. Therefore, when there is sufficient material to sustain the finding that a person is a "*bootlegger*" within the meaning and definition of section 2 (b) of PASA and the material on record also sustains the assumption of likelihood of his activity causing grave or widespread danger to public health, public order has to be deemed to be likely to be adversely affected.....”

6. Applying the ratio of above judgments in the facts of the present case, it would clearly appear that no other offences, except the offences punishable under the Prohibition Act as narrated in the grounds, were registered against the petitioner and the quantity of liquor which he was alleged to be carrying could not sustain the assumption of danger to public health which could be termed as grave or widespread. In such

circumstances, the provision for deeming danger to public order was not available to the detaining authority and, in any case, there was no material to conclude that the petitioner was likely to cause grave and widespread danger to public health.

7. Therefore, the impugned order was not sustainable in law and hence required to be set aside. Accordingly, petition is allowed, impugned order dated 29.12.2006 is set aside and the petitioner is directed to be set at liberty forthwith if not required to be detained in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(D.H.WAGHELA, J.)

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